

DOL'S NEW JOINT EMPLOYER PROPOSAL COULD IMPACT THE TECH INDUSTRY: WHAT YOUR BUSINESS NEEDS TO KNOW

Insights
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DOL's New Joint Employer Proposal Could Impact The Tech Industry: What Your Business Needs To Know

Technology businesses relying on staffing firms or subcontractors for content moderation, IT support, ad operations, or other services may soon have clearer lines around whether they can be held jointly liable for their contractors' wage or leave violations. A new proposal from the Department of Labor's (DOL) Wage and Hour Division would clarify when multiple businesses can be cited as a "joint employer" under a trio of laws enforced by the department. The proposal would set up a four-part test that will give companies greater flexibility when entering into business relationships, focusing on the amount of control a business exercises over its contractors, franchisees, and other entities. While the DOL's proposal doesn't target technology companies specifically, it will clear up which company should be liable for wage and hour, family leave, and certain immigration protections, if your firm actually controls another businesses' workers' hiring, scheduling, pay, or recordkeeping. This Insight will go over the proposal and how it could uniquely impact the tech industry.

What's In The Proposal?

The Wage and Hour Division's proposed rule will revisit the standard for determining whether multiple businesses should be legally responsible for compliance with minimum wage and overtime pay, child labor limits, and other

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requirements under the Fair Labor Standards Act (FLSA). It also would apply to enforcement actions brought under the Family and Medical Leave Act (FMLA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). The simplified four-part test would make it less likely for multiple businesses to be deemed “joint employers”

The proposal clarifies that **franchisor status is not necessarily relevant** to determining joint employer status, nor is providing form documents to ensure compliance with the law, or requiring that vendors or franchisees follow worker safety and minimum wage laws. Under the proposal, tech companies that share a brand, software platform, safety rules, or vendor standards, will generally not have to be concerned about joint employer liability.

For more details about the proposal, [check out FP's full coverage here](#).

Tech Industry Impact

Tech firms face the most risk for potential joint employer liability when outsourcing talent and relying on on-site vendor teams because those relationships can blur the line between contractor management and employer control. The proposal's focus on “actual” control over hiring, firing, scheduling, pay, and recordkeeping means informal supervision by product, engineering, or IT leaders can create risk even if the agreement says the vendor is a contractor and independent of your company.

For technology companies this could mean:

- More compliance scrutiny for organizations that heavily rely on contractors, especially companies using blended teams across engineering, IT support, cybersecurity, data labeling, QA, and customer support.
- Reduced risk of joint employer liability when using staffing firms, BPO providers, or MSPs for content moderation, trust-and-safety, ad operations, data labeling, or IT support
- Potential increased exposure that a tech company could be treated as a joint employer if managers directly supervise third-party workers in practice, not just on paper.

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Technology companies might want to consider doing the following:

- Ensure you review vendor contracts, SOWs, and day-to-day management to make sure reserved rights of control do not turn into **actual** control.
- Audit who directs third-party workers, who approves time and pay, and who keeps employment records.
- Train your managers not to treat contracted staff like direct reports.
- Ensure your policies and procedures for third-party workers are adhered to by your management team.

Conclusion

Fisher Phillips will continue to monitor the DOL's joint employer rulemaking process. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Tech Industry Team](#).